

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

The Appeals Board finds the issue raised by the respondent is the jurisdictional issue of whether claimant suffered an accidental injury that arose out of and in the course of her employment with the respondent. See K.S.A. 1997 Supp. 44-534a.

On December 26, 1997, the claimant was working for the respondent as a CNA and injured her right knee while transferring a patient from a wheelchair to her bed. Respondent first provided claimant with immediate medical treatment at the emergency room of the Jefferson County Memorial Hospital in Winchester, Kansas. Claimant was eventually referred for further treatment to orthopedic surgeon Michael T. McCoy, M.D., in Topeka, Kansas.

Dr. McCoy first saw claimant on January 24, 1998, and diagnosed a right patellar dislocation. Dr. McCoy's treatment recommendation was that claimant required a surgical realignment of the right patella, secondary to her work-related injury. The surgical procedure was scheduled for February 3, 1998, but it was canceled as respondent's insurance carrier refused to authorize the procedure.

On two previous occasions, claimant dislocated her right patella. In 1985 when claimant was 16 years of age, she dislocated the right patella while playing softball. In 1993, claimant suffered a right patellar dislocation while working as a CNA for another nursing home. As a result of this dislocation, claimant received a workers compensation settlement based on a 12 percent whole body impairment.

After the 1993 accident, claimant testified she remained asymptomatic and was able to perform all of her activities including playing softball without pain or discomfort until the December 26, 1997, accident. All examining or treating physicians acknowledge that claimant has a preexisting congenital defect described as subluxed patellofemoral joint of both knees. Respondent contends claimant's present need for the patellar realignment surgical procedure is not related to the December 26, 1997, accident but is related to her preexisting congenital defect.

At respondent's request, claimant was examined and evaluated by Chris Fevurly, M.D., internal and preventive medicine physician with a speciality in occupational medicine located in Lawrence, Kansas. Dr. Fevurly saw claimant one time on February 18, 1998. The results of his examination and evaluation are contained in a report dated February 19, 1998, admitted into evidence at the preliminary hearing. Dr. Fevurly believed the work-related component of claimant's injury had resolved. He agreed with Dr. McCoy that claimant needed the patellar realignment surgical procedure but attributed the need for the procedure to claimant's underlying congenital patellofemoral joint problems and not the work-related accident.

Claimant's attorney referred claimant for examination and evaluation to P. Brent Koprivica, M.D., board certified in emergency, preventive, and occupational medicine. Dr.

Koprivica saw claimant on one occasion, June 20, 1998. His report dated June 20, 1998, was also admitted into evidence at the preliminary hearing. Dr. Koprivica diagnosed claimant with a preexisting anatomic situation of the right knee which placed claimant at risk for a patellar dislocation. However, the doctor found claimant's December 26, 1997, work-related injury was the direct and proximal cause of her right patellar dislocation. Although claimant was at risk because of the preexisting condition, Dr. Koprivica opined the work-related injury clearly made a significant contribution for the necessity of the patellar realignment surgical procedure.

Respondent contends the most persuasive medical opinion contained in the preliminary hearing record is the opinion of Dr. Fevurly, who saw claimant at the respondent's request. The respondent argues claimant's present need for the patellar realignment surgical procedure is entirely related to her preexisting congenital right knee condition and not the December 26, 1997, work-related injury. The work-related component of the injury has resolved. Accordingly, the respondent argues since K.S.A. 1997 Supp. 44-501(c) only allows an injured worker recovery to the extent the work-related injury causes increased disability, then claimant also is not entitled to medical treatment for the aggravation of the preexisting condition.

The Appeals Board finds the preliminary hearing as a whole supports the Administrative Law Judge's order and should be affirmed. Specifically, that Appeals Board finds the medical records of treating physician Dr. McCoy and the medical report of Dr. Koprivica, coupled with claimant's testimony, support the finding that claimant's preexisting congenital right knee condition was aggravated or accelerated by the December 26, 1997, work-related injury. Where a preexisting condition is aggravated or accelerated by a work-related injury, the injured worker is entitled to workers compensation benefits. See Claphan v. Great Bend Manor, 5 Kan. App. 2d 47, 611 P.2d 180, *rev. denied* 228 Kan. 806 (1980).

Furthermore, the Appeals Board is mindful that K.S.A. 1997 Supp. 44-501(c) requires an injured worker to prove increased disability to be entitled to an award of permanent disability as a result of an aggravation of preexisting condition. However, the Appeals Board finds a claimant does not have to prove increased disability in order to obtain medical treatment for an aggravation or acceleration of a preexisting condition. See Osbern v. Big Smith Brands, Inc., Docket No. 193,652 (February 1995). Therefore, the Appeals Board finds claimant's current need for the right patellar realignment surgical procedure is the result of the December 26, 1997, work-related injury that aggravated claimant's preexisting congenital right knee condition.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Bryce D. Benedict's October 26, 1998, preliminary hearing Order for Medical Treatment should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 1998.

BOARD MEMBER

c: Timothy M. Alvarez, Kansas City, MO
Christina R. Madrigal, Overland Park, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director